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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,144	09/19/2003	Michael T. Carley	16497.1.1.5	7207
22913	7590	03/24/2009		
Workman Nydegger 1000 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111			EXAMINER BACHMAN, LINDSEY MICHELLE	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 03/24/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/667,144

Applicant(s)

CARLEY ET AL.

Examiner

LINDSEY BACHMAN

Art Unit

3734

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17, 19, 36-44 and 48-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17, 19, 36-44 and 48-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date 10-10-08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to Applicant's amendment filed 10 October 2008.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17, 19, 37, 39-41, 43-44, 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Derowe et al. (WO 99/62408).

Claim 17, 40, 41, 43, 44, 50, 51, 55, 56, 58, 59: Derowe discloses a device that contains an annular shaped body (Figure 9a) defining a plane (the plane is the page) disposed about a central axis (that is perpendicular to the page and extends through the center of the ring). The body is resiliently deformable with respect to the plane (page 19, lines 26-28) towards a transverse configuration in which a plurality of looped elements (386) extend about the periphery of the body. The device further contains a plurality of tines (382) that extend towards the central axis. In the transverse configuration, the tines extend parallel to the central axis (page 19, lines 26-28). The device also contains

a biased spring element (384) that can resiliently allow the tines to be moved away from one another (page 19, line 28). Further, the spring element contains a curved inner region (inward of holes near 386) that serve to limit penetration of the tines (see Figure 9a).

Claim 19: The looped elements are a plurality of outer curved region that are connected to one another and form a continuous pattern around the periphery of the body in the planar configuration (Figure 9a).

Claim 37, 39, 52, 54: There are primary tines (382) and secondary tines (382) which all have a length. The secondary tines are disposed on opposite sides of primary tines (see Figure 9a).

Claims 17, 19, 37-44, 50-59 are rejected under 35 U.S.C. 102(e) as being anticipated by Ginn et al. (WO 02/45593).

The applied reference has a common inventors with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claims 17, 19, 37, 39, 40, 41, 43, 44, 50, 51, 52, 54, 55, 56, 58, 59: Ginn discloses a device that contains an annular shaped body (Figure 12) that lies in a plane (the plane is the page) that is movable into a transverse configuration extending out of the plane that contains loops (outer curved portions), a plurality of primary and

secondary tines (418, 419), and a biased spring element (inner ring portion near 419) that biases the element in the planar configuration (abstract).

Claim 38, 53: The primary tines are longer than the secondary tines.

Claim 42, 57: The device is made of a superelastic alloy (page 7, lines 23-25).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 36 is rejected are rejected under 35 U.S.C. 103(a) as being unpatentable over Derowe'408 in view of Sniffin et al. (US Patent 7,169,158).

Derowe discloses a device that contains an annular shaped body (Figure 9a) defining a plane (the plane is the page) disposed about a central axis (that is perpendicular to the page and extends through the center of the ring). The body is resiliently deformable with respect to the plane (page 19, lines 26-28) towards a transverse configuration in which a plurality of looped elements (386) extend about the periphery of the body. The device further contains a plurality of tines (382) that extend towards the central axis. In the transverse configuration, the tines extend parallel to the central axis (page 19, lines 26-28). The device also contains a biased spring element (384) that can resiliently allow the tines to be moved away from one another (page 19, line 28). Further, the spring element contains a curved inner region (inward of holes near 386) that serve to limit penetration of the tines (see Figure 9a).

Derowe does not teach that the tines are arcuate.

Sniffin teaches that it is old and well known to use arcuate tines (260) when designing the tines to engage with the body (Figure 26b) in order to provide the advantage of providing more consistent and reliable connections (column 20, lines 50-63). It would be obvious to one of ordinary skill in the art to modify the device of Derowe with the teachings of Sniffin so that it too has this advantage.

Claim 42 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Derowe'408, as applied to Claim 41 and 56, and further in view of Loshakove et al. (WO 00/56227).

Derowe'408 teaches the limitations of Claims 42 and 57 except for the use of a superelastic alloy.

Loshakove'227 teaches a similar device used for engaging a blood vessel that is made out of a superelastic alloy (page 10, lines 31-33) because it will have shape memory. It would have been obvious to one of ordinary skill in the art to modify the device of Derowe'408 with superelastic alloy, as taught by Loshakove'227 so that it too has this advantage.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSEY BACHMAN whose telephone number is (571)272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. B./
Examiner, Art Unit 3734
/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734